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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PLANNED PARENTHOOD FEDERATION
 OF AMERICA, INC., et al.,

Plaintiff,

vs.

CENTER FOR MEDICAL PROGRESS, et
 al.,

Defendants.

Case No. 3:16-cv-00236-WHO

**DECLARATION OF DIANA K. STERK
 IN SUPPORT OF PLAINTIFFS' MOTION
 FOR ATTORNEYS' FEES AND NON-
 STATUTORY COSTS**

Date: November 18, 2020
 Time: 2:00 p.m.
 Place: Courtroom 2, 17th Floor
 Judge: Hon. William H. Orrick

1 I, DIANA STERK, declare:

2 1. I am a senior associate at the firm of Arnold & Porter Kaye Scholer LLP
3 (A&P), and one of the counsel of record for Plaintiffs in the above-entitled action. I joined A&P,
4 or its predecessor firm Kaye Scholer LLP, in 2011 and have been an active member of the New
5 York State Bar since 2012.

6 2. I have personal knowledge of the facts stated in this declaration and, if
7 called as a witness, I could and would testify competently to them.

8 3. I obtained a bachelor of science in Civil Engineering from the
9 Massachusetts Institute of Technology. I attended law school at Northwestern University School
10 of Law, where I was on the executive board of the Journal of Technology and Intellectual
11 Property, and graduated *cum laude* in 2011. While in law school, I was a summer associate at
12 Kaye Scholer LLP.

13 4. My practice focuses on life sciences, particularly within the complex
14 commercial litigation and products liability realms. I have worked on numerous lawsuits
15 involving life sciences and the pharmaceutical industry, as well as cases alleging fraud and breach
16 of contract.

17 5. My civil rights experience includes representing Clemente Aguirre in a
18 new trial after the Florida Supreme Court vacated his convictions and death sentence (and before
19 the prosecution dismissed the charges during jury selection), representing individuals filing for
20 asylum in the United States, and successfully obtaining an honorable discharge and veterans'
21 benefits for a Vietnam War veteran suffering from PTSD.

22 6. My standard hourly rate in 2018 was 780; in 2019, 855; and in 2020, 910.

23 7. A&P maintains an electronic system for recording and managing time
24 entries for individual matters. I record my time accurately and on a timely basis, providing a
25 description of the work performed. The time included in this declaration is based on A&P's
26 records of the time I entered contemporaneously.

27 8. I became involved in the Planned Parenthood case in early 2018 but
28

1 became heavily involved in mid-2018, when document discovery was ongoing, prior to the Ninth
2 Circuit's decision on Defendants' anti-SLAPP appeal.

3 **Phase III: Discovery**

4 9. Written Discovery: Starting from mid-2018, I was intimately involved in
5 all aspects of the written discover phase, including drafting responses to Defendants' vast
6 numbers of discovery requests, drafting numerous discovery motions and oppositions to
7 Defendants' motions and appeals, and conducting extensive meet and confer with Defendants on
8 discovery disagreements. As the most senior associate on the case, part of my role was
9 coordinating more junior associates and the different work streams related to discovery.

10 10. I drafted many of Plaintiffs' discovery responses, which involved in-depth
11 review of the factual record, and coordination and discussions with in-house counsel or other
12 employees of Plaintiffs. Responding to this discovery was extremely time-consuming because
13 we had ten separate clients, and thus, ten separate sets of responses and people with whom to
14 coordinate.

15 11. I was one of the lead attorneys on most discovery motions filed after June
16 2018. For example, I was one of the lead attorneys, with Amy Bomse, on Plaintiffs' motions to
17 compel related to Defendants' claims of irrelevance and reporters privilege as to documents
18 related to the Human Capital Project. This work included extensive meet and confers,
19 researching and briefing the parameters of the various First Amendment protections and
20 explaining why they did not defeat our discovery demands. I also was a lead attorney with
21 respect to Plaintiffs' objections to Defendants' improper and duplicative discovery requests, such
22 as interrogatories and document requests concerning "profit" from fetal tissue and Plaintiffs'
23 abortion practices. As part of that process, I was involved in meeting and conferring regarding
24 those objections, and briefing Plaintiffs' oppositions to Defendants' motions to compel and
25 subsequent challenges to the magistrate's orders denying these motions.

26 12. I worked with Jeremy Kamras and counsel for third parties subpoenaed by
27 Defendants, assisting them in understanding the procedural and substantive issues and reviewing
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1 documents third parties produced, including working with Planned Parenthood of the Pacific
2 Southwest (“PPPSW”) through its bank regarding Defendants’ subpoena for financial records,
3 and drafting and arguing the motions related to this subpoena. I also obtained information
4 regarding and drafted responses to certain of Defendants’ discovery requests.

5 13. In addition to drafting motions, I also prepared or assisted in preparing
6 others to argue discovery motions to Judge Ryu and Judge Orrick.

7 14. Depositions: At the end of 2018, and beginning in earnest in 2019,
8 depositions began. I was heavily involved in this stage of the litigation. I spent hundreds of
9 hours preparing deposition outlines, preparing witnesses for deposition, taking and defending
10 depositions, meeting and conferring regarding numerous deposition-related issues, drafting and
11 opposing motions to compel and motions to quash or for protective order, and drafting, objecting
12 to, and supervising the service of deposition notices and witness subpoenas.

13 15. Before depositions began, I drafted a master deposition outline that served
14 as a base for deposing all of the defense witnesses. Drafting this outline required extensive
15 review of documents and videos, and analysis of the issues that we would need or want to prove
16 at trial.

17 16. I personally deposed Defendants Adrian Lopez and Albin Rhomberg, as
18 well as fact witness James Holman. I drafted or assisted in drafting the majority of deposition
19 outlines for individual Defendants and defense fact witnesses, and analyzed documents relevant
20 to those witnesses for potential use in depositions. I took the lead on drafting the deposition
21 outline for David Daleiden, which required review and analysis of hundreds of documents, as
22 well as hours of video clips.

23 17. I also personally prepared and defended the following fact witness
24 depositions: Tram Nguyen (PPGC), Krista Noah (PPFA), Jeffrey Palmer (PPGC’s Rule 30(b)(6)
25 witness), and Dorothy Furgerson (PPMM). I attended the preparation sessions for a few other
26 witnesses. On the eve of trial, I also prepared for and took the deposition of third party Linda
27 Tracy.

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1 18. I participated in numerous meet and confers and drafting of joint letters
2 and motions arising from deposition issues. I also supervised deposition scheduling and other
3 deposition logistics for all witnesses.

4 19. In the case of witnesses I was defending, it is my typical practice to
5 prepare by reviewing relevant documents, and written discovery, in addition to drafting an
6 outline. I then would typically spend the better part of a day, if not an entire day, preparing the
7 witness. Many of the witnesses required at least this much preparation, given the wide range of
8 topics for which some witnesses were designated or the number and length of recordings that
9 were potentially relevant to the witness's testimony. In almost all cases, the depositions took
10 seven hours on the record, which often equated to ten-hour days or longer. Taking depositions
11 required even more time, first to review potentially relevant documents, review relevant videos,
12 develop an outline, and then to take the deposition.

13 20. Despite denial of Defendants' motions for written discovery on fetal tissue
14 programs and other asserted illegal conduct by the Plaintiffs, Defendants attempted to discover
15 the same information through depositions. I, along with other team members, researched and
16 drafted Plaintiffs' motion for protective order, which Judge Ryu granted. I also drafted, or
17 assisted in drafting, several other motions related to issues that arose during depositions.

18 21. Expert Discovery: I prepared outlines for and took the depositions of
19 Defendant experts Brian Prendergast and James Wood. I was also involved in drafting outlines
20 for other expert witnesses, and general expert strategy.

21 22. Over about a year and a half, I spent approximately 1150 hours on these
22 three stages of discovery. A majority of that time was spent preparing for and attending
23 depositions of fact and expert witnesses.

24 **Phase V: Motions for Summary Judgment**

25 23. I was also involved in the summary judgment stage. I was responsible for
26 drafting sections of Plaintiffs' motion for summary judgment and reply memorandum, as well as
27 Plaintiffs' oppositions to Defendants' motions for summary judgment. These were massive
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1 undertakings, done in a fairly compressed time schedule. The Defendants' motion for summary
2 judgment attacked every one of Plaintiffs' fifteen causes of action, seeking summary judgment on
3 behalf of every Defendant. In addition, the individual Defendants other than Daleiden raised
4 numerous issues unique to them as to most of Plaintiffs' claims.

5 24. We had a team meeting to allocate drafting responsibility. I took the lead
6 on at least several sections of Plaintiffs' motion/reply and Plaintiffs' opposition to Defendants'
7 motions, supervised the research of more junior associates on several other sections, and, along
8 with Meghan Martin, worked on analyzing and reviewing certain facts relevant to the briefs filed
9 by both Plaintiffs and Defendants. I also prepared to argue portions of the Plaintiffs' motion to
10 the extent the Court had posed questions on the topic. I spent approximately 275 hours between
11 May 3 and July 19, 2019, drafting and editing the summary judgment memoranda that I worked
12 on and preparing for oral argument.

13 25. The complexity of the work we did concerning the cross-motions for
14 summary judgment is reflected in the Court's opinion addressing the motions, which is 137 pages
15 in length, and resolved several critical issues on Plaintiffs' favor.

16 **Phase VI: Pre-Trial**

17 26. Prior to trial, I spent considerable amounts of time analyzing Plaintiffs'
18 strategy and drafting an order of proof to use as the basis for trial strategy. I participated in
19 multiple strategy meetings regarding the upcoming trial; assisted in and observed the mock trial;
20 attended pretrial conferences; and began drafting examination outlines for trial.

21 27. I took the lead on drafting many pre-trial filings, including deposition
22 designations, portions of *Daubert* motions, and several motions *in limine*. I also spent time
23 researching and drafting other motions. In addition, I attended and prepared to argue certain
24 issues at the pre-trial hearings on these motions.

25 28. Along with Meghan Martin, I was heavily involved in determining
26 documents for the exhibit list and locating video clips to add to the exhibit list and to potentially
27 use at trial.

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1 29. During this phase, I also conducted a review of most deposition testimony
2 to determine which witness depositions we might want to use at trial, and drafted designations
3 from relevant witnesses.

4 30. I spent approximately 450 hours in the pre-trial phase.

5 **Phase VII: Trial**

6 31. I was involved in every aspect of trial. As a core member of the trial team,
7 I attended trial every day that it was in session over the six week period, except one. I prepared
8 witnesses for testifying, drafted cross and direct examination outlines for many fact and expert
9 witnesses, assembled evidence, researched legal issues that emerged, drafted motions during trial,
10 drafted and objected to deposition designations that had not been completed prior to trial, and
11 participated in strategy sessions.

12 32. I attended and participated in jury selection, both at the Court and in
13 strategy sessions between court days.

14 33. I conducted the trial direct examinations of six witnesses, and was
15 responsible for organizing and presenting deposition designation videos and exhibits to the Court.
16 I also sat second chair for a number of other cross and direct examinations during trial, including
17 for Defendants Daleiden, Rhomberg and Lopez. I had a lead role in, and spent significant time
18 drafting the trial examination outline for David Daleiden, who was the key witness for
19 Defendants, and whose testimony spanned four days.

20 34. I drafted letters filed with the court on various evidentiary issues and
21 prepared pocket briefs for possible use. In connection with deposition designations, I was in
22 frequent communication with Defendants during trial regarding objections and amendments. I
23 drafted and argued motions related to Defendants' over-designation of testimony that included
24 issues that had already been excluded on motions *in limine*. I also helped edit and revise jury
25 instructions and the verdict form filed with the Court.

26 35. I, along with Sharon Mayo, drafted adverse inferences for and motions
27 regarding several witnesses who had invoked the Fifth Amendment during their depositions,
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1 including Troy Newman, Brianna Baxter and Anna Bettisworth Davin.

2 36. I also worked on strategizing and drafting slides for the opening and
3 closing arguments. I have worked extensively with PowerPoint in my career, so became the lead
4 on putting the slides together for this case in conjunction with the team.

5 37. I spent approximately 570 hours in the trial phase. These were extremely
6 long work days, that often entailed arriving at the courthouse before 7:30am, and then preparing
7 witnesses, working on outlines, drafting motions or oppositions, and preparing exhibits or
8 anything else we may need the next day for trial until late into the evening (and sometimes early
9 morning) each day.

10 **Phases IX: Attorney Fee Motion**

11 38. I drafted this declaration for Plaintiffs' motion for attorneys' fees. I also
12 coordinated the collection of billed time for all attorneys, and created charts of fees for each
13 Arnold & Porter attorney by phase that were reviewed by each timekeeper, and have been used in
14 the declarations submitted in support of Plaintiffs' motion. I spent approximately 15 hours on
15 these tasks through today.

16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct. Executed this 18th day of September, 2020, in New York, NY.
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19 By: /s/ Diana K. Sterk
20 DIANA K. STERK
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ECF ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatory.

Dated: September 18, 2020

/s/ Steven L. Mayer
Steven L. Mayer